

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

MICHAEL J. WHALON,  
Plaintiff

v.

CHRISTY'S OF CAPE COD, LLC  
Defendant

C.A. NO. MAGISTRATE JUDGE *Dein*

04 11939 MLW

COMPLAINT AND REQUEST FOR JURY TRIAL

INTRODUCTION

Plaintiff, Michael J. Whalon (hereinafter "Whalon"), alleges that as an employee of Defendant, Christy's of Cape Cod, LLC, (hereinafter "Christy's"), he was wrongfully removed from his position on or about March 27, 2002 as a Marketing Supervisor. Plaintiff alleges that his removal was illegal, in that the Defendant violated provisions of state and federal laws preventing discrimination in employment based on handicap (emotional disorder): specifically and respectively, Massachusetts General Laws Chapter 151B and Federal Law Americans With Disabilities Act of 1990 (hereinafter "ADA"), 42 U.S.C. 12101, et seq., as amended.

JURISDICTION

Jurisdiction is conferred as Plaintiff has raised claims under Federal Law (ADA), 42 U.S.C. 12101 et seq.

PARTIES

1. The Plaintiff, Michael J. Whalon, is a natural person who resides at 251 Shagbark Road, Taunton, Bristol County, Massachusetts 02780.
2. The Defendant, Christy's of Cape Cod, LLC, is a Limited Liability Corporation located at 105 Pleasant Street, Hyannis, Barnstable County, Massachusetts 02601.

RECEIPT #  
AMOUNT \$ 750  
SUMMONS ISSUED *yes*  
LOCAL RULE 4.1  
WAIVER FORM  
MCF ISSUED  
BY DPT. CLK. *for*  
DATE *9/3/04*

FACTS

4. Whalon first became employed by Christy's in 1998 as a Marketing Supervisor, with responsibilities for management and overseeing of each Christy's store locations. His duties included cash controls, store accounting and overseeing of employees.
5. In mid-2000, Whalon was assigned the additional responsibilities of computer systems, but was not provided any training for this function. Whalon began to experience an increase in work-related stress at this time.
6. On February 22, 2002 Whalon's supervisor, Patrick McKeown (hereinafter "McKeown") informed him that certain "irregularities" occurred with inventory and/or deposits and that he was going to be terminated. Even though Christy's provides annual performance reviews, no such reviews were given to Whalon; therefore, there was no indication of poor performance and/or conduct given to Whalon prior to this meeting.
7. Despite the fact that Whalon denied any irregularities in his conduct and/or performance and volunteered to investigate the irregularities, he was suspended from employment at that time. It is interesting to note that during the suspension period, after February 22, 2002, Whalon continued to receive work-related requests for assistance on various dates and from various store personnel, which assistance he provided.
8. Prior to Whalon's suspension, he had been treating with various health care providers for work-related stress; although he was able to attend to his duties.

9. Whalon provided medical documentation to Christy's both prior and subsequent to February 22, 2002 regarding his health condition.
10. Whalon hand-delivered a letter dated March 19, 2002 to Christy's (copy enclosed as Exhibit A), rebutting the allegations of improper performance and/or conduct and informed Christy's, unequivocally, that he was in treatment for work-related stress.
11. Christy's took no action to advise Whalon of his rights under the Family Medical Leave Act, his rights to file a Worker's Compensation claim, his right to a reasonable accommodation under the ADA, nor did Christy's provide any proof of any wrongful action by Whalon.
12. Further, Christy's did not afford Whalon progressive discipline and even went to the extent of accusing him of having an affair with a fellow employee.
13. Christy's conduct during this time was extreme and outrageous and further exacerbated Whalon's deteriorating emotional health.
14. On March 27, 2002, Whalon met with McKeown and another employee, and handed to McKeown a doctor's note stating he would be unable to return to work until May 4, 2002 (see Exhibit B attached hereto), at which time he was given a termination letter effective that date.

COUNT I VIOLATION OF MASSACHUSETTS  
ANTI-DISCRIMINATION LAWS  
(MASSACHUSETTS GENERAL LAWS CHAPTER 151B)

15. The Plaintiff realleges the allegations of the preceding Paragraphs 1 through 14 and restates and incorporates them by reference herein.

David O. Scott,  
Attorney at Law

200 Chauncy Street

Mansfield, Massachusetts 02048

(508) 261-7090

16. Christy's, by its actions, through its employees, supervisors and/or agents, has violated the Massachusetts Anti-Discrimination Laws under Massachusetts General Laws Chapter 151B.
17. As a result of Christy's actions, Whalon was wrongfully terminated and incurred damages for lost wages and benefits, loss of professional standing and reputation, and severe emotional distress.

COUNT II - WRONGFUL TERMINATION

18. The Plaintiff realleges the allegations of the preceding Paragraphs 1 through 17 and restates and incorporates them by reference herein.
19. Christy's, by its actions, through its employees, supervisors and/or agents, wrongfully discharged Whalon in violation of public policy by false pretenses.
20. As a result of Christy's improper and unlawful actions, Whalon was wrongfully terminated and incurred damages for lost wages and benefits, loss of professional standing and reputation, and severe emotional distress.

COUNT III  
VIOLATION OF FEDERAL LAW (42 USC 12101 et seq.)

21. The Plaintiff realleges the allegations of the preceding Paragraphs 1 through 20 and restates and incorporates them by reference herein.
22. Christy's, by its actions, through its employees, supervisors and/or agents, by use of false allegations, violated Whalon's federal rights to be free from handicap discrimination.
23. As a result of Christy's actions, Whalon was wrongfully terminated and incurred damages for lost wages and

benefits, loss of professional standing and reputation,  
and severe emotional distress.

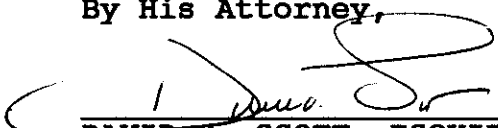
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Michael J. Whalon, demands judgment  
against Defendant, Christy's of Cape Cod, LLC, on each and/or  
all counts, in an appropriate amount, together with appropriate  
and reasonable attorney's fees, costs and interest.

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury on all issues so  
triable under law.

Respectfully Submitted,  
The Plaintiff,  
By His Attorney,

  
\_\_\_\_\_  
DAVID O. SCOTT, ESQUIRE  
B.B.O. NO. 449165  
200 CHAUNCY STREET  
MANSFIELD, MASSACHUSETTS 02048  
TELEPHONE (508) 261-7090

DATED September 2, 2004

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Michael J. Whalon v. Christy's of Cape Cod, LLC

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

\_\_\_ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

X II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases

\_\_\_ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.

\_\_\_ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.

\_\_\_ V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES ☐ NO ☒

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC § 2403)

YES ☐ NO ☒

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S.A. PARTY?

YES ☐ NO ☒

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC § 2284?

YES ☐ NO ☒

7. DO ALL OF ALL THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION?—(SEE LOCAL RULE 40.1(D)).

YES ☒ NO ☐

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GPVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION ☒ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION ☐ CENTRAL DIVISION ☐ WESTERN DIVISION ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David O. Scott, Esquire

ADDRESS Law Office of David O. Scott, P.C., 200 Chauncy St., Mansfield, MA 02048

TELEPHONE NO. (508) 261-7090

(Categfrm.rev - 11/00)

04 11939 MLW

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Michael T. Whalon

**(b)** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Bristol  
(EXCEPT IN U.S. PLAINTIFF CASES)**(c)** ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)David O. Scott, Esquire  
Law Office of David O. Scott, P.C.  
200 Chauncy Street  
Mansfield, MA 02048**DEFENDANTS**

Christy's of Cape Cod, LLC

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Barnstable  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

ATTORNEYS (IF KNOWN)

Kathryn M. Murphy, Esquire  
Murphy, Hesse, Toomey & LeHane  
P.O. Box 9126  
Quincy, MA 02269-9126**II. BASIS OF JURISDICTION** (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**V. NATURE OF SUIT** (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 680 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 761 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 610 Selective Service <input type="checkbox"/> 650 Securities/Commodities/Exchange <input type="checkbox"/> 675 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions

**VI. CAUSE OF ACTION** (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Plaintiff claims handicap discrimination in employment - 42USC12101 et seq.

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions):

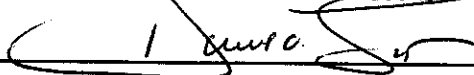
JUDGE

DOCKET NUMBER

DATE

9/2/04

SIGNATURE OF ATTORNEY OF RECORD



David O. Scott

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_